

REMARKS

In reply to the Final Office Action of April 21, 2005, applicant submits the above amendments and the following remarks along with a Request for Continued Examination.

Claims 1-55 are pending in this application, with claims 1 and 6 being independent. Claims 46-55 have been added. Claims 4, 5, 6, 8, and 45 have been amended. No new matter has been added.

Applicant requests the claims be allowed in light of the above amendments and the following remarks.

The § 103 Rejection

Claims 1-2 and 45 have been rejected as allegedly unpatentable over U.S. Patent No. 5,046,912 ("Bostrom"). Applicant requests reconsideration and allowance of the claims because Bostrom does not disclose or suggest the subject matter of the claims. In particular, Bostrom does not disclose or suggest "transporting [a] railroad container containing moist grain by-product" or "transporting [a] railroad container containing moist grain by-product."

The Office Action concedes that Bostrom does not disclose these limitations. However, the Office Action asserts, "it would have been obvious . . . to have modified Bostrom's process to include moist grain by-product, as this is simply a particular type of grain product, and therefore a mere design expediency, especially since no specific structure germane to handling moist grain by-products is set forth."

Applicant respectfully disagrees and submits that the Office has not established a prima facie case of obviousness at least because there is no motivation to combine the teachings of Bostrom regarding transportation of materials that flow easily with knowledge of materials that do not flow easily and because there would not have been a reasonable expectation of success of using the railroad container described in Bostrom to transport and remove the moist grain by-product from the container by inverting the container.

Bostrom describes a method railroad car that can be used to transport materials that flow from the container under the force of gravity. The materials described in Bostrom are generally

dry materials, e.g., wood chips, iron ore, grain, lump coal and metallurgical (ground) coal, and Bostrom recognizes that that some of these materials flow faster than other. Col. 4:53 – col. 5:4. Bostrom recognizes that some materials can have “very poor flow characteristics,” e.g., moist sand that may require special handling techniques. Col. 5:59-64. Thus, one of skill in the art would appreciate that some materials would have such poor flow characteristics that they would not be expected to flow out of the railroad car described by Bostrom.

As stated in the specification, page 2, lines 11-26, moist grain by-products tend to stick and clog orifices and chutes of coal cars, and such cars would not work well, if at all, with moist grain by-products. Other studies confirm that moist grain by-products are difficult to handle and tend to stick to surfaces that contain them. See e.g., “Corn Gluten Feed: Composition, Storage, Handling, Feeding and Value,” J.W. Schroeder, AS-1127, May 1997 (available at <http://www.ext.nodak.edu/extpubs/ansci/dairy/as1127w.htm>) (stating that the “[t]exture of wet [corn gluten feed] is similar to oatmeal, which restricts flow and makes handling difficult. Good results have been obtained by mixing the WCGF [wet corn gluten feed] with other feedstuffs and blowing the mixture into an upright silo. Attempting to blow WCGF alone will plug the blower pipe. Adding corn, haylage, or other alternative feeds will generally keep the blower pipe clear.”).¹ Thus, it is clear that moist grain by-product is not simply a particular type of grain product, but is categorically different from the materials mentioned in Bostrom, because moist grain by-product are sticky materials, which generally hinders their removal from a container when the container is inverted.

At least for the foregoing reasons, applicants submit that there is no motivation to combine the teachings of Bostrom regarding transportation and dumping of materials that flow easily with knowledge that moist grain by-products do not flow easily and there would not have been a reasonable expectation of success of using the railroad container described in Bostrom to transport and remove the moist grain by-product from the container by inverting the container.

Furthermore, with respect to new claims 50 and 55, Bostrom does not disclose or suggest loading a bulk quantity of moist grain by-product into about 50 or more invertible railroad

¹ A copy of this reference is enclosed as Appendix A.

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containers, arranging the railroad containers in a train, and transporting the railroad containers containing moist grain by-product.

Accordingly, the applicant submits that the Office has not established a prima facie case of obviousness and asks that the all claims be allowed.

Enclosed is check including \$950 for the Petition for Extension of Time fee (\$450) and the excess claims fee (\$500). Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: _____

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